

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

_____)	
UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 99A00054
)	
WSC PLUMBING, INC.,)	Judge Robert L. Barton, Jr.
Respondent.)	
_____)	

**ORDER GRANTING COMPLAINANT’S SECOND AND THIRD
MOTIONS TO COMPEL DISCOVERY**

(February 9, 2000)

I. INTRODUCTION

On December 13, 1999, and January 10, 1999, the United States of America (Complainant) filed with this court its Second and Third Motions to Compel Discovery, respectively. In these Motions, Complainant requests that this court issue an Order directing WSC Plumbing, Inc. (Respondent or WSC) to submit complete and accurate answers to Complainant’s Fifth, Sixth, Seventh, Tenth, Sixteenth and Seventeenth Interrogatories. In response to Complainant’s Second and Third Motions to Compel, Respondent argues that it has answered the Interrogatories to the best of its ability, but that some of the information requested in the Interrogatories relates to the affairs of a corporation—Craftsmen Plumbing, Inc. (Craftsmen)—about which WSC possesses insufficient information.

Complainant’s Second and Third Motions to Compel are GRANTED. I find that Respondent failed to file timely objections to Complainant’s First Interrogatories; therefore, Respondent is precluded from objecting to the scope or breadth of those Interrogatories. The information requested in the contested Interrogatories appears to be within the personal knowledge of several of Respondent’s former employees, particularly Carmelita Combe and William W. Combe. Since, according to their Instructions, Complainant’s First Interrogatories are directed in part at Respondent’s former employees, and since Respondent failed to object to those Interrogatories on grounds of overbreadth, Respondent must conduct an inquiry among Carmelita Combe, William W. Combe, and any other of its former employees who may possess information requested in Complainant’s Fifth, Sixth, Seventh, Tenth, Sixteenth and Seventeenth Interrogatories. After

conducting such an inquiry, Respondent must file Supplemental Answers to Complainant's First Interrogatories. These Supplemental answers must be served on Complainant not later than February 21, 2000.

II. BACKGROUND AND PROCEDURAL HISTORY

A. GENERAL BACKGROUND

Complainant served its First Interrogatories on Respondent on July 26, 1999. According to the 30-day deadline for responding to Interrogatories set forth at 28 C.F.R. § 68.19(b), Respondent had until August 27, 1999, to file its answers or objections to Complainant's Interrogatories; however, Respondent filed no such answers or objections by the deadline. Informal negotiations between Complainant and Respondent led to an agreement under which Respondent promised to serve its answers or objections on Complainant by September 30, 1999. However, the September 30, 1999, deadline also came and went without any answers or objections being served by Respondent. Consequently, on October 13, 1999, Complainant filed its First Motion to Compel, in which it sought an Order directing Respondent to submit answers to Complainant's First Interrogatories. On November 8, 1999, I issued an Order Granting the First Motion to Compel in which I directed Respondent to serve complete answers to the seventeen questions set forth in Complainant's First Interrogatories not later than November 30, 1999. Order Granting C.'s First Mot. to Compel at 2. Moreover, my Order of November 8, 1999, held that Respondent's repeated failure to file timely objections constituted a waiver, precluding Respondent from objecting to any of the Complainant's Interrogatories. Id.

On November 29, 1999, Respondent served its first set of responses to Complainant's First Interrogatories. Complainant considered Respondent's initial answers, as well as Respondent's First Supplemental Responses—which were served on Complainant on December 10, 1999—to be inadequate. Therefore, on December 13, 1999, Complainant filed a Second Motion to Compel Discovery (C.'s Second Mot. to Compel), along with numerous attachments and a Memorandum of Law, in which it seeks an Order from this court directing Respondent to provide accurate and complete responses to its Interrogatories. On December 17, 1999, Respondent served its Second Supplemental Responses, but these responses were also considered unsatisfactory by Complainant. Consequently, on January 10, 2000, Complainant filed a Third Motion to Compel Discovery (C.'s Third Mot. to Compel), along with numerous attachments and a Memorandum of Law, in which it makes essentially the same allegations made in the Second Motion to Compel.

On January 14, 2000, Respondent filed a Memorandum in Opposition to Complainant's Third Motion to Compel (R.'s Opp. Memo.) in which it argues that it has responded to Complainant's Interrogatories to the best of its ability, but that it lacks information sufficient to respond fully to those questions that seek information regarding the employment policies of Craftsmen. R.'s Opp. Memo. at 1.

B. THE CONTESTED INTERROGATORIES

Complainant's Second and Third Motions to Compel Discovery seek an Order from this court directing Respondent to answer Complainant's Fifth, Sixth, Seventh, Tenth, Sixteenth and Seventeenth Interrogatories.

Complainant's Fifth Interrogatory asks Respondent to "state the full names, addresses and telephone numbers of each and every individual who holds or has held stock in Craftsmen Plumbing, Inc. For each individual identified please state the amount of his or her stock ownership, and state the date and year it was acquired." C.'s Third Mot. to Compel (Attachment A at 4). Respondent's Second Supplemental Response to this Interrogatory (1) indicates Respondent's belief that Carmelita and William W. Combe are the owners of Craftsmen's stock, (2) sets forth the home address of Carmelita and William W. Combe, and (3) indicates Respondent's belief that Carmelita and William W. Combe acquired their interests in Craftsmen on November 12, 1997, the date when Craftsmen was incorporated. R.'s Opp. Memo. (Exhibit 1 at 4); C.'s Third Mot. to Compel (Attachment D at 2). This response does not set forth the telephone numbers of Carmelita and William W. Combe, nor does it state the relative amounts of Carmelita and William W. Combe's stock ownership in Craftsmen.

Complainant's Sixth Interrogatory asks Respondent to "state the full names, addresses and telephone numbers of each and every individual who owns or has owned any interest, of any nature other than stock ownership, in Craftsmen Plumbing, Inc. For each individual identified, please state the nature of the interest owned, and the date and year it was acquired." C.'s Third Mot. to Compel (Attachment A at 4). Respondent's Second Supplemental Response to this Interrogatory disavows knowledge of individuals other than Carmelita and William W. Combe who own any interest in Craftsmen. R.'s Opp. Memo. (Exhibit 1 at 4); C.'s Third Mot. to Compel (Attachment D at 2).

Complainant's Seventh Interrogatory asks Respondent to "state the full names, addresses and telephone numbers of each and every individual who is or has been a corporate officer of Craftsmen Plumbing, Inc. For each individual identified, please specify the position held, and the period of time during which he or she held said corporate office." C.'s Third Mot. to Compel (Attachment A at 4). Respondent's Second Supplemental Response to this Interrogatory indicates WSC's belief that Carmelita Combe is the Chief Executive Officer of Craftsmen and that William W. Combe is the Secretary and Chief Financial Officer of Craftsmen; moreover, the response indicates WSC's belief that Carmelita and William W. Combe have held their respective positions since Craftsmen was first incorporated. R.'s Opp. Memo. (Exhibit 1 at 4); C.'s Third Mot. to Compel (Attachment D at 2).

Complainant's Tenth Interrogatory asks Respondent to "state when Craftsmen Plumbing, Inc. began conducting business at 1017 South Hathaway Street, Santa Ana, California, 92705." C.'s Third Mot. to Compel (Attachment A at 4). Respondent's Second Supplemental Response to this Interrogatory indicates WSC's belief that Craftsmen began operating at that address "on or about the first quarter of 1998." R.'s Opp. Memo. (Exhibit 1 at 4); C.'s Third Mot. to Compel (Attachment D at 2).

Complainant's Sixteenth and Seventeenth Interrogatories request WSC to provide information regarding the hiring of former WSC employees by Craftsmen. Specifically, the Sixteenth Interrogatory seeks information about the dates when Craftsmen hired twenty-four named individuals, each of whom was apparently a former employee of WSC. Third Mot. to Compel (Attachment A at 9). The Seventeenth Interrogatory asks WSC to identify "the individual who hired, i.e., made the decision on behalf of Craftsmen Plumbing, to employ each of the [24] individuals listed" in the Sixteenth Interrogatory. Id. (Attachment A at 10). Respondent's Second Supplemental Response to these Interrogatories indicates that the three owner-officers of WSC were hired by William W. Combe of Craftsmen in early December, 1997; however, WSC emphasizes it "do[es] not have information regarding hiring of other individuals" by Craftsmen. R.'s Opp. Memo. (Exhibit 1 at 4); C.'s Third Mot. to Compel (Attachment D at 2).

III. STANDARD OF REVIEW

The scope of inquiry during discovery extends to any relevant information that is not privileged. See 28 C.F.R. § 68.18(b) (1999). In the discovery context, relevancy "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, an issue that is or may be in the case." United States v. Ro, 1 OCAHO 1700, 1701-02 (Ref. No. 265) (1990), 1990 WL 512118, *1-2 (O.C.A.H.O.) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)); see also United States v. Westheimer Wash Corp. d/b/a Bubbles Car Wash, 1998 WL 745996, *2 (O.C.A.H.O.).¹

If a party fails to respond adequately to a discovery request, or objects to the request, or fails to permit inspection as requested, the discovering party may move to compel a response or an inspection. See 28 C.F.R. § 68.23(a) (1999). Although the Office of the Chief Administrative Hearing Officer (OCAHO) has its own procedural rules for cases arising under its jurisdiction, the Administrative Law Judge (ALJ) may refer to analogous provisions of the Federal Rules of Civil Procedure (FED. R. CIV. P.) and federal case law interpreting them for guidance in deciding issues based on the rules governing OCAHO proceedings. Section 68.23(a) is similar to

¹ Citations to OCAHO precedents in bound Volumes I and II, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practice Laws of the United States, reflect consecutive decision and order reprints within those bound volumes. Citations to OCAHO precedents in bound Volumes III-VII, Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States, reflect consecutive decision and order reprints within those bound volumes. For OCAHO precedents appearing in bound volumes, pinpoint citations refer to specific pages in those volumes; however, pinpoint citations to OCAHO precedents in as yet unbound Volumes are to pages within the original issuances. Decisions that appear in Volumes I-VII will be cited to the page in that bound publication on which they first appear; the OCAHO reference number, by which all as yet unbound decisions are cited, also will be noted parenthetically for Volume I-VII decisions. Unbound decisions that have only been published on Westlaw shall be identified by Westlaw reference number.

FED. R. CIV. P. 37(a)(2)(B), which provides for motions to compel responses to discovery requests in cases before the federal district courts. Consequently, Rule 37 and federal case law interpreting it are useful in deciding whether a motion to compel should be granted under the OCAHO rules. See Westheimer Wash Corp., 1998 WL 745996, at *2. Additionally, the Federal Rules “may be used as a general guideline in any situation not provided for or controlled by [the OCAHO] rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.” See 28 C.F.R. § 68.1 (1999). Finally, a motion to compel a response to discovery “must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without action by the [ALJ].” See 28 C.F.R. § 68.23(b)(4) (1999); see also Fed. R. Civ. P. 37(a)(2)(B).

Responses to interrogatories must either answer the discovery request or state the reasons for objecting to the request. See 28 C.F.R. §§ 68.19(b), 68.20(e) (1999). The party objecting to a discovery request bears the burden of demonstrating that the objection is justified. See 28 C.F.R. § 68.23(a) (1999). Moreover, if a party fails to object to interrogatories in a timely manner, all objections are waived. Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992) (stating that “[i]t is well established that a failure to object to discovery requests within the time required [to respond to the requests] constitutes a waiver of any objection.”).

The discovery process must be conducted in good faith. See Iron Workers Local 455 v. Lake Constr. & Development Corp., 1997 WL 148819, *5 (O.C.A.H.O.). A general statement from the party responding to an interrogatory that he or she lacks knowledge of the information sought is insufficient; such a party must conduct a reasonable inquiry to acquire such knowledge. If, after conducting such a reasonable inquiry, a party continues to allege that it cannot provide all the information requested in an interrogatory, explanation must be given as to precisely what efforts have been made, when they were made, and by whom they were made in order to obtain the information. Id. at **5-7.

IV. ANALYSIS

Respondent justifies its incomplete responses to Complainant’s First Interrogatories by arguing that it lacks information regarding the ownership, management or employment policies of Craftsmen. Indeed, Respondent goes so far as to allege that Complainant’s Interrogatories are “not within the scope of proper and allowable discovery regarding the substance and allegations in the complaint now pending.” R.’s Opp. Memo. at 2. If Respondent had timely objected to the interrogatories, this position might be justified. But, as noted previously, Respondent did not object. Consequently, for the reasons stated below, I find that these arguments lacks merit under the circumstances. Therefore, Complainant’s Second and Third Motions to Compel Discovery are GRANTED, and Respondent is Ordered to provide complete answers to Complainant’s Fifth, Sixth, Seventh, Tenth, Sixteenth and Seventeenth Interrogatories not later than February 21, 2000.

In the Instructions section of Complainant's First Interrogatories, Complainant makes clear that "[e]ach Interrogatory is addressed to the personal knowledge of Respondent as well as knowledge and information of Respondent's attorneys, investigators, agents, employees, and other representatives." C.'s Third Mot. to Compel (Attachment A at 2) (underscoring added). Moreover, the Definitions section of Complainant's First Interrogatories indicates that "[w]here the word 'employee' is used, it is meant to refer to both former and present employees of the Respondent, WSC Plumbing, Inc." Id. Respondent did not file timely objections to these requirements; therefore, all grounds for objection—such as overbreadth or burdensomeness—are deemed waived. Richmark Corp., 959 F.2d at 1473. Having filed three separate sets of responses to Complainant's First Interrogatories, Respondent will not be permitted to raise an eleventh-hour objection that the Interrogatories are not within the scope of proper discovery. If Respondent objected to the Interrogatories at issue here on grounds of overbreadth, it was obliged to express its objections in a timely manner. Indeed, had Respondent not been delinquent in failing to serve potentially meritorious objections to Complainant's Interrogatories, the present Order might have had a very different tenor.

Evidence in the record indicates that Carmelita Combe and William W. Combe—the current owners, officers and directors of Craftsmen—are former employees of WSC. According to the instructions and definitions set forth in Complainant's First Interrogatories, any information within the personal knowledge of Carmelita and William W. Combe is therefore attributable to WSC for purposes of responding to the Interrogatories at issue here. As the owners, officers and directors of Craftsmen, Carmelita and William W. Combe would be expected to possess the information sought by Complainant's Fifth, Sixth, Seventh, Tenth, Sixteenth and Seventeenth Interrogatories. Therefore, to satisfy the good faith and reasonable inquiry requirements inherent in all responses to discovery, WSC must seek the relevant information from Carmelita Combe, William W. Combe, or any other former WSC employees who may have personal knowledge of the information requested. If, after conducting such an inquiry, WSC remains unable to provide the requested information, it must so declare under oath, and must set forth a detailed statement of the efforts it employed to acquire the information.

V. CONCLUSION

Complainant's Second and Third Motions to Compel are GRANTED. I find that Respondent failed to file timely objections to Complainant's First Interrogatories; therefore, Respondent is precluded from objecting to the scope or breadth of those Interrogatories. The information requested in the contested Interrogatories appears to be within the personal knowledge of several of Respondent's former employees, particularly Carmelita Combe and William W. Combe. Since, according to their Instructions, Complainant's First Interrogatories are directed in part at Respondent's former employees, and since Respondent failed to object to those Interrogatories on grounds of overbreadth, Respondent must conduct an inquiry among Carmelita Combe, William W. Combe, and any other of its former employees who may possess information requested in Complainant's Fifth, Sixth, Seventh, Tenth, Sixteenth and Seventeenth Interrogatories. After

conducting such an inquiry, Respondent must file Supplemental Answers to Complainant's First Interrogatories. These Supplemental answers must be served on Complainant not later than February 21, 2000.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2000, I have served the foregoing Order Granting Complainant's Second and Third Motions to Compel Discovery on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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